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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
THE CITY OF LYNCHBURG
FOR
LYNCHBURG REGIONAL WASTEWATER TREATMENT PLANT
AND
COLLECTION SYSTEM
VPDES PERMIT No. VA0024970

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15 (8a) and (8d) between the State Water Control Board and the City of Lynchburg, for the purpose of resolving certain violations of the State Water Control Law and the applicable Permit and Regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "BRRO-L" means the Blue Ridge Regional Office of DEQ, located in Lynchburg, Virginia.
3. "CSO" means Combined Sewer Overflow.
4. "CSS" means Combined Sewer System, a type of sewer system that collects sanitary sewage and stormwater runoff in a single pipe system.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality.
7. "DMR" means Discharge Monitoring Report.
8. "Facility", "Plant", or "WWTP" means the Lynchburg Regional Wastewater Treatment Plant located at 2301 Concord Turnpike in Lynchburg, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the City of Lynchburg.
9. "JRI" means the James River Interceptor.
10. "Lynchburg" or "City" means the City of Lynchburg, a political subdivision of the Commonwealth of Virginia. The City of Lynchburg is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "Notice of Violation" or "NOV" means a type of Notice of Violation under Va. Code § 62.1-44.15.
12. "O&M" means Operation and Maintenance.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
14. "Permit" means VPDES Permit number VA0024970; which was issued under the State Water Control Law and the Regulation to the City on

August 19, 2005, and which expired on August 18, 2010. The Permit has been administratively continued and is currently undergoing re-issuance.

15. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
16. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
17. "Regulation" means the VPDES Permit Regulation at 9 VAC 25-31-10 *et seq.*
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
20. "Va. Code" means the Code of Virginia (1950), as amended.
21. "VAC" means the Virginia Administrative Code.
22. "VPDES" means the Virginia Pollutant Discharge Elimination System.
23. "Warning Letter" or "WL" means a type of Notice of Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. The City of Lynchburg owns and operates the Facility located at 2301 Concord Turnpike in Lynchburg, Virginia. The Permit allows the City to discharge treated sewage and other municipal wastes from the Facility to the James River, in strict compliance with the terms and conditions of the Permit.
2. The James River is located in the James River Basin. The James River was listed as a Category 5A water (the Water Quality Standard is not attained, and the stream is impaired for one or more designated uses by a pollutant(s) and requires the development of a TMDL) in the 2010 Integrated Report. The stream is impaired for aquatic life use based on benthic macroinvertebrate bioassessments by non-point and unknown sources. The James River mainstem from Big Island Dam to the I-95 Bridge in Richmond is impaired for fish consumption by PCBs in fish tissue. The cause of the PCB contamination is listed as contaminated sediments with source(s) unknown.
3. Department records indicate that discharges from the WWTP and/or the Combined/Sanitary Sewer Collection System, in violation of Part I.E. and Part II. F. of the Permit, occurred as follows:
 - a. For the March 2010 compliance period, the City reported discharges that occurred on March 8, 9, 11, 12, 13, 15 and 19, all reaching state waters with the exception of the March 12 event. Department records

indicate that the City reported an unpermitted discharge during dry weather conditions, caused by a sewer line blockage, to state waters on March 27, 2010 of an estimated volume of 39,000 gallons. The City failed to report the discharge within 24-hours of the occurrence as required by Part II.G. of the Permit. Written notification of the discharge was received by the Department on March 30, 2010. The Department issued NOV No. W2010-05-L-0010 on May 13, 2010 to address the violations. The City responded on May 19, 2010 that the dry weather discharges were the result of O&M issues which had been resolved, and the wet weather discharges were being addressed under the CSO Control Program. The City reported a total estimated volume of 75,100 gallons for the discharges.

b. For the April 2010 compliance period, the City reported discharges that occurred on April 5 (two events), 7, 12, 17, 19, and 27 that reached state waters for a total estimated volume of 17,500 gallons. The Department issued NOV No. W2010-06-L-0005 on June 4, 2010 to address the violations. The City responded on June 10, 2010 that the dry weather discharges were the result of O&M issues which had been resolved, and the wet weather discharges were being addressed under the CSO Control Program.

c. For the June 2010 compliance period, the City reported a discharge that occurred on June 16 that reached state waters. Department records indicate that the City reported an unpermitted discharge during dry weather conditions, caused by a sewer line collapse, to state waters on June 27, 2010 of an estimated volume of 135,000 gallons. The Department issued NOV No. W2010-08-L-0003 on August 6, 2010 to address the violations. The City responded on August 12, 2010 that the dry weather discharges were the result of O&M issues which had been resolved, and the wet weather discharges were being addressed under the CSO Control Program.

The City reported a total estimated volume of 135,000 gallons for the discharges during the period.

d. For the July 2010 compliance period, the City reported discharges that occurred on July 13 and 20 (2 events) that reached state waters. The Department issued NOV No. W2010-09-L-0001 on September 9, 2010 to address the violations. The City responded on September 16, 2010 that the dry weather discharges were the result of O&M issues which had been resolved, and the wet weather discharges were being addressed under the CSO Control Program. The City reported a total estimated volume of 10,500 gallons for the discharges during the period.

e. For the August 2010 compliance period, the City reported discharges that occurred on August 4, 11 and 26 that reached state waters. The Department issued NOV No. W2010-10-L-0002 on October 7, 2010 to address the violations. The City responded on October 12, 2010 that the dry weather discharges were the result of O&M issues which had been resolved, and the wet weather discharges were being addressed under the CSO Control Program. The City reported a total estimated volume of 482,310 gallons for the discharges during the period.

f. For the September 2010 compliance period, the City reported discharges that occurred on September 15, 17, and 22 that reached state waters. On September 24, 2010 at approximately 5:32 p.m. the City received a citizen's report of dead fish in the James River in the lower basin area. The Lynchburg Fire Department was dispatched to the scene to assess the situation and report back to the City's Department of Utilities. The City notified the Department by a voicemail message at 6:44 p.m. that same evening. The City also notified the Virginia Department of Emergency Management of the situation at 10:32 p.m. of a discharge to State waters. The BRRO-L Biologist and Prep Coordinator responded to the notification and performed a site assessment with the assistance of the Lynchburg Fire Department. DEQ staff observed low in-situ dissolved

oxygen concentrations and fish mortality in the James River in the vicinity of the Rock-Tenn low-water dam. The investigation was hindered by approaching darkness, with the Biologist returning the morning of September 25, 2010 to conduct a follow-up inspection. The City furnished follow-up written documentation to the Department on September 29, 2010 of the Combined Sewer Overflow that occurred at CSO outfall number 057, located at 1312-1348 Jefferson Street in the lower basin area. The City explained that the overflow occurred during the James River Interceptor construction project. This replacement project is part of the long-term effort to separate the City's sanitary and stormwater collection systems and help eliminate CSOs. The contractor's pumps had fouled and were not keeping up with the increased flow. This led to sewage backing up in the JRI to CSO outfall number 057 and discharging to the James River. The City estimates the total volume of the discharge to be 270,000 gallons. Additional overflows from CSO outfall number 057 occurred on September 27, 2010 due to additional fouling of the contractor's pumps, and on September 28, 2010 as a result of the contractor performing a pump change-out. The Department issued Notice of Violation number NOV-10-10-BRRO-L-002 on October 14, 2010 to address the overflows that occurred from September 24 through September 28, 2010 at CSO outfall number 057. The City responded to the Notice of Violation by phone on October 19, 2010, by referencing the explanations provided in its September 20 and 29, 2010 letters. Additional information regarding the incidents was provided by the City in a follow-up letter dated October 20, 2010. The City reported additional discharge events on September 25 (two events) and 30 (four events) that reached state waters, with the Department issuing Notice of Violation number NOV W2010-11-L-0002 on November 8, 2010 to address the remaining overflows which occurred from September 15-30, 2010. The City responded on November 18, 2010 that the dry weather discharges were the result of O&M issues which had been resolved, and the wet weather discharges were being addressed under

the CSO Control Program. The City reported a total estimated volume of 851,335 gallons for the discharges during the period.

g. For the October 2010 compliance period, the City reported discharges that occurred on October 15, 22 and 27, 2010 that reached state waters. The Department issued NOV No. W2010-12-L-0001 on December 7, 2010 to address the violations. The City responded on December 15, 2010 that the dry weather discharge of October 15, 2010 was the result of an O&M issue which had been resolved. The overflows on October 22 and 27, 2010 were again associated with the JRI replacement project and the contractor's pumping operation. The City reported a total estimated volume of 359,000 gallons for the discharges during the period.

4. Based on the September 24, 2010 discharge event at CSO #057, the Department performed a review and assessment on all discharges that occurred within the Combined and Sanitary Sewer Systems and at the WWTP for the period from March 2010 through October 2010, inclusive. The discharges addressed in the Order either (a) occurred outside areas designated by the City for CSO separation work, (b) did not exit a designated CSO outfall during a wet weather event, (c) were classified as dry weather events, or (d) were deemed preventable, e.g., CSO outfall number 057 events.
5. The City's operating logs indicate that it discharged treated wastewater from the WWTP from March 1, 2010 through October 31, 2010.
6. Va. Code § 62.1-44.5.A. states that: "Except in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
7. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES Permit, or another Permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.

8. The Permit, at Part I.A.1., authorizes the discharge of effluent at outfall 001, and at Part I.A.2., authorizes the discharge of stormwater at outfall 200, with both outfalls located at the WWTP.
9. The Permit, at Part I.E., authorizes discharges from within the Combined Sewer System (CSS) at 36 Combined Sewer Overflow (CSO) points listed at Part I.–Attachment A. The City must not discharge from any authorized CSO in excess of any limitation necessary to meet water quality standards established pursuant to State law.
10. The Board has determined that the requirements outlined in the Nine Minimum Controls, CSS Reporting, and the City’s Long-Term Control Plan (LTCP) contained in the Permit at Part I.E. (1-3) are limitations necessary to meet water quality standards under State Water Control Law.
11. The Permit, at Part II.F. prohibits unauthorized discharges.
12. Va. Code § 62.1-44.15(5a) states that a VPDES Permit is a “certificate” under the statute.
13. The Department has issued coverage to the City under the General Nutrient Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading, which enumerates additional limitations to discharges from the Facility.
14. The James River is a surface water located wholly within the Commonwealth and considered “state waters” under State Water Control Law.
15. Based on Department staff observations and findings, in addition to the overflow reports and additional documentation submitted by the City, the Board concludes that the City of Lynchburg has violated VPDES Permit No. VA0024970, the Va. Code and the Regulation by discharging untreated sewage from their separated and Combined Sewer Systems, while concurrently failing to comply with the conditions of the Permit, as summarized in paragraphs C.3. - C.4, above.

SECTION D: Agreement and Order

By virtue of the authority granted it pursuant to Va. Code § 62.1-44.15, and upon consideration of Va. Code § 10.1-1186.2, the Board orders the City of Lynchburg, and the City agrees:

1. To perform the actions described in Appendix A of this Order; and
2. To pay a civil charge of \$38,092.00 in settlement of the violations cited in this Order, to be paid as follows:
 - a. The City of Lynchburg shall pay \$3,731.00 of the civil charge within 30 days of the effective date of this Order.
 - b. The City of Lynchburg shall reimburse DEQ \$782.00 for DEQ fish kill investigative costs within 30 days of the effective date of the Order.
 - c. The City of Lynchburg shall satisfy \$33,579.00 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix A of this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," for the civil charge and the DEQ fish kill investigative costs and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The City of Lynchburg shall include its Federal Employer Identification Number (FEIN) with the civil charge payment **and** shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF); and that payment of the DEQ fish kill investigative costs is for reimbursement of DEQ expenditures.

- d. The net project costs of the SEP to the City of Lynchburg shall not be less than the amount set forth in paragraph D.2.c. If it is, the City of Lynchburg shall pay the remaining amount in accordance with paragraph D.2. of this

Order, unless otherwise agreed to by the Department. "Net project cost" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the City of Lynchburg will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.

- e. By signing this Order the City of Lynchburg certifies that it has not commenced performance of the SEP.
- f. The City of Lynchburg acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by the City of Lynchburg to a third party, shall not relieve the City of its responsibility to complete the SEP as described in this Order.
- g. In the event it publicizes the SEP or the SEP results, the City of Lynchburg shall state in a prominent manner that the project is part of a settlement of an enforcement action.
- h. The Department has the sole discretion to:
 - i. Authorize any alternate, equivalent SEP proposed by the City; and
 - ii. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
- i. Should the Department determine that the City of Lynchburg has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify the City in writing. Within 30 days of being notified, the City shall pay the amount specified in paragraph D.2.c., above as provided in paragraph D.2., above.

SECTION E: Administrative Provisions

- 1. The Board may modify, rewrite, or amend the Order with the consent of the City of Lynchburg, for good cause shown by the City, or on its own

motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.
3. For the purposes of this Order and subsequent actions with respect to this Order only, the City of Lynchburg admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. The City of Lynchburg consents to venue in the Circuit Court of the City of Lynchburg for any civil action taken to enforce the terms of this Order.
5. The City of Lynchburg declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by the City of Lynchburg to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority. The City of Lynchburg does not waive any rights or objections it may have in any enforcement action by other federal, state, or local

authorities arising out of the same or similar facts to those recited in this Order.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The City of Lynchburg shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or other such occurrence. The City shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The City of Lynchburg shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days of learning of any condition listed above, which the City intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the City of Lynchburg.
11. This Order shall continue in effect until:

a. The Director or his designee terminates the Order after the City of Lynchburg has completed all of the requirements of the Order;

b. The City of Lynchburg petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the City of Lynchburg.

12. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve the City of Lynchburg from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
13. Any plans, reports, schedules or specifications attached hereto or submitted by the City of Lynchburg and approved by the Department pursuant to this Order are incorporated into this Order. Any noncompliance with such approved documents shall be considered a violation of this Order.
14. The undersigned representative of the City of Lynchburg certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the City to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the City.
15. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this Order.
16. By its signature below, the City of Lynchburg voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 4th day of August, 2011.



Robert J. Weld, Regional Director
Blue Ridge Regional Office
Department of Environmental Quality

The City of Lynchburg voluntarily agrees to the issuance of this Order.

Date: 6/1/11 By: L. Kimball Payne, III
L. Kimball Payne, III City Manager
City of Lynchburg

Commonwealth of Virginia

City of Lynchburg

The foregoing document was signed and acknowledged before me this 1 day

of June, 2011, by L. Kimball Payne III, who is City Manager of the City of Lynchburg on behalf of the City.


Notary Public

205167
Registration No.

My commission expires: 4-30-12.

Notary seal:



**APPENDIX A
CITY OF LYNCHBURG
SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)**

In accordance with Va. Code § 10.1-1186.2, the City of Lynchburg shall perform the Supplemental Environmental Project (SEP) identified below in the manner specified in the Appendix. As used in this Order and Appendix, SEP means an environmentally beneficial project undertaken as partial settlement of a civil enforcement action and not otherwise required by law.

1. The SEP to be performed by the City of Lynchburg is the replacement of game fish in the James River. The City shall submit a plan describing the proposed project to the Virginia Department of Game and Inland Fisheries (DGIF), for review and approval no later than **December 31, 2011**.
2. The SEP shall be completed by **September 30, 2012**.
3. The City of Lynchburg shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified either by a Certified Public Accountant or by a responsible corporate officer or owner. The City of Lynchburg shall submit the final report and certification to the Department by **December 31, 2012**.

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